

IN THE MATTER OF A BOARD OF INQUIRY
UNDER THE
HUMAN RIGHTS CODE, 1981
Statutes of Ontario, Chapter 53, as amended

MISS JUSTINE BLAINEY
BY HER LITIGATION GUARDIAN
MRS. CAROLINE BLAINEY,

Complainant,

- and -

THE ONTARIO HOCKEY ASSOCIATION,
THE METROPOLITAN TORONTO HOCKEY LEAGUE,
MR. BRENT LADDS,
THE ETOBICOKE CANUCKS AND
MR. BOB IMPEY,

Respondents.

BOARD OF INQUIRY: Ian C. Springate

APPEARANCES:

Counsel for the Complainant: Ms. Anna Fraser
Counsel for the Respondents: Mr. Bryan Finlay, Q.C.
Counsel for the Ontario Human
Rights Commission: Mr. Michael Bader

Hearings: April 15, 28, May 7,
June 9, 10, 11, 12,
August 24, 25, 26, 27, 28,
September 2, 4, 11,
October 21, 22,
November 4, 1987.

DECISION

These proceedings arise out of a complaint filed on behalf of Ms. Justice Blainey by her litigation guardian and mother, Caroline Blainey. The complaint alleges that the respondents are in violation of the Human Rights Code.

The facts leading up to the filing of the complaint are not in dispute. Ms. Blainey is a female resident of Metropolitan Toronto, who was born on January 11, 1973. In May of 1986, she tried out for a position on the Etobicoke Canucks Pee Wee "A" hockey team (the "Etobicoke Canucks"), a team affiliated with the Metropolitan Toronto Hockey League (the "MTHL"). The Etobicoke Canucks is a team comprised solely of boys. On the basis of her skill and ability as demonstrated in the tryout, Ms. Blainey was offered a position on the team for the 1986-87 hockey season. Ms. Blainey accepted the offer. Subsequently, however, Mr. Bob Impey, President of the Etobicoke Canucks, advised Mr. Robert Johnson, the team coach, as well as Ms. Blainey's mother that because of her sex Ms. Blainey was ineligible to play on the team. In the result, Ms. Blainey did not play with the Canucks.

The MTHL is a constituent member of the Ontario Hockey Association. The decision not to allow Ms. Blainey to play on the Etobicoke Canucks was consistent with the Ontario Hockey Association's "restricted integration policy". This

policy prohibits females from playing on male teams except where there is no comparable all-female team in the relevant geographic area. Organized female hockey is operated by the Ontario Women's Hockey Association ("OWHA"), which is also a constituent member of the Ontario Hockey Association. The view of these various hockey organizations was that Ms. Blainey should play on an OWHA team.

Section 1 of the Human Rights Code guarantees to every person the right to equal treatment with respect to services, goods and facilities, without discrimination because of sex. The Code also defines the term "equal". The provisions in question provide as follows:

- 1 Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.
- 9(c) "equal" means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination.

The Code provides that certain situations which might otherwise conflict section 1 do not, in fact, involve an infringement of the right to equal treatment. Prior to the events giving rise to these proceedings, one such

provision related expressly to athletic activities. Section 19(2) of the Code provided as follows:

19(2) The right under section 1 to equal treatment with respect to services and facilities is not infringed where membership in an athletic organization or participation in an athletic activity is restricted to persons of the same sex.

Following the enactment of the Canadian Charter of Rights and Freedoms, Ms. Blainey applied to the courts for a declaration that section 19(2) of the Code was contrary to section 15(1) of the Charter. This section of the Charter declares that every individual is entitled to the equal protection and equal benefit of the law without discrimination on the basis of sex. The matter came before the Ontario Court of Appeal in Re Blainey and Ontario Hockey Association et al. (1986), 54 O.R. (2d) 513. A majority of the Court concluded that section 19(2) of the Code was inconsistent with section 15(1) of the Charter in that it denied to Ms. Blainey the right to the equal protection and equal benefit of the law as expressed in the Human Rights Code. In the result, the Court declared section 19(2) of the Code to be unconstitutional and of no force or effect.

In delivering the judgment of the majority of the Court of Appeal, Mr. Justice Dubin noted that the Court's ruling did not mandate integrated sports in the province. He

indicated that distinctions which have a different impact on participants by reason of their sex might be reasonable, if there exists a valid purpose for such a distinction. In this regard he referred specifically to section 44 of the Sex Discrimination Act of the United Kingdom. The relevant portion of Mr. Justice Dubin's judgment reads as follows:

A declaration that s. 19(2) of the Human Rights Code is unconstitutional will not mandate integrated sports in this province. In the field of athletic activity, distinctions which have a different impact on participants by reason of their sex may be reasonable, if there is a valid purpose for such a distinction. Such a distinction can be seen in the British equivalent to s. 19(2) found in s 44 of the Sex Discrimination Act, 1975 (U.K.), c. 65, which reads as follows:

44. Nothing in Part II to IV shall, in relation to any sport, game or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man, render unlawful any act related to the participation of a person as a competitor in events involving that activity which are confined to competitors of one sex.

Subsequent to the Court of Appeal decision, the Legislature amended the Human Rights Code so as to delete section 19(2). The Legislature did not enact a replacement along the lines of section 44 of the United Kingdom Sex Discrimination Act. It follows that unless it comes within one of the situations deemed not to be a violation of the Code, discrimination on the basis of sex in athletic

activities is now unlawful in Ontario. The only "exception" claimed to be relevant to these proceedings is that contained in section 13(1) of the Code. This section provides that "special programs" designed to assist disadvantaged persons and groups do not infringe section 1 of the Code. The respondents contend that the hockey program offered by the OWHA qualifies as a "special program" in that it is designed to assist females, a disadvantaged group insofar as opportunities to play hockey are concerned. Section 13(1) provides as follows:

13(1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

The OWHA was formed in 1975 to provide females with the opportunity to play organized competitive hockey. Prior to its formation there were few such opportunities. Because society at large views hockey as a male sport, many females simply do not consider the possibility of playing hockey. Those who do express an interest in the game, often face objections from their parents. Indeed, Ms. Blainey herself testified that when she first asked her mother if she could play hockey like her brother David, her mother's response was, "No, girls don't play hockey". Ms. Donna-Lynn

Rosa, a former OWHA player who is now on a full hockey scholarship at Northeastern University in Boston, testified that when she first expressed a desire to play hockey her father objected, saying no daughter of his was going to play a boy's sport. Ms. Rosa's mother subsequently sneaked her out the back door in order to sign her up. The OWHA has for a number of years engaged in an active education program designed to make females, especially younger girls, aware of the availability of organized female hockey, while at the same time assuring their parents that hockey is an appropriate, and safe, game for them to play.

Once OWHA teams are formed in a particular area they must secure ice time for practices and games. Municipal and other authorities responsible for the operation of arenas have, unfortunately, generally been very resistant to requests for ice time for OWHA teams. When ice time has been made available, it has frequently been for shorter periods of time than for male teams and/or at at less convenient times of the day. The OWHA has engaged in a long and difficult battle to overcome this problem. It has achieved a great deal of success, particularly in the greater Toronto area. In certain parts of the province, however, female teams still face difficulties in obtaining required ice time.

In light of the difficulties it has faced, the OWHA has achieved a remarkable level of success. This has been due, in part, to the efforts of a large number of volunteers who serve as administrators, coaches, trainers and officials at the local level. It is also due to the efforts of two women who have taken the lead in combating prejudice against women in hockey. They include Ms. Fran Rider, herself an active player, who has been on the executive of the OWHA since 1977. For the past six years she has served as the OWHA's unpaid President. Ms. Rider has been at the forefront in the development of female hockey in Ontario. She played a leading role in having women's hockey included in the Ontario Winter Games and in establishing an annual Women's National Championship. Ms. Rider was also instrumental in the organizing the first Women's World Hockey Tournament which was held in North York in April 1987. The other individual in question is Deborah Adams, the OWHA's Development Co-ordinator. Ms. Adams is responsible for the implementation of the OWHA's education programs, and directly assists in the formation of new OWHL teams and leagues. The efforts of Ms. Rider and Ms. Adams have enabled large numbers of females in this province to play organized, competitive hockey. It is noteworthy, therefore, that both Ms. Rider and Ms. Adams testified in opposition to Ms. Blainey's complaint. Indeed, the response to the complaint was put forward by the OWHA and its counsel on behalf of the named respondents.

The OWHA has generally experienced a 10 to 14 percent increase each year in the number of females playing hockey. In the 1986-87 hockey season, there were 286 OWHA teams in operation with 4,229 players. Impressive as these numbers are, the OWHA system pales in comparison with organized male hockey in Ontario. In the 1984-85 hockey season, there were 12,175 male teams with 201,162 players. Further, while the total number of female players suggests that the OWHA, as a whole, is relatively firmly established, individual OWHA teams and leagues continue to face problems because of a lack of female players. Even in the Toronto area, where the OWHA is perhaps most firmly established, some OWHA clubs have been unable to maintain a full range of teams at appropriate age groupings. In other parts of the province, the departure of players for a variety of reasons, such as marriage, attending university or moving away, has resulted in some teams having to fold. Other teams have continued to operate but with less than the optimal number of players.

As noted above, the Ontario Hockey Association has adopted a policy of "restricted integration". Males must play on male teams. Females are generally required to play on female teams, except where they are under the age of 12 and there is not a local OWHA team able to provide them with an opportunity to play hockey. Pursuant to this exception, a

number of females do play on male hockey teams. Fifty-four girls were approved to play on boys' teams in the 1986-87 hockey season. The actual wording of the restricted integration policy allows for females above the age of 12 to be given permission to play on male teams if the situation warrants. As yet, however, no female over 12 has sought permission to do so. Ms. Blainey did not apply for permission to play on a male team pursuant to the terms of the Ontario Hockey Association's restricted integration policy. Had she made such an application, however, she would have been refused due to the presence of a number of OWHA teams in the Toronto area.

A great deal of evidence was led concerning how hockey opportunities available to males in the MTHL compare with those available to females in the OWHA. Much of the evidence was contradictory, perhaps because of the different experiences of the witnesses as well as their differing perceptions as to what constitutes good hockey. The evidence does, however, establish that the OWHA, particularly in the Toronto area, offers females a hockey opportunity that is in many respects equal to that provided in the MTHL. One major difference relates to body checking. The MTHL allows for body checking at age 12. The OWHA prohibits deliberate body checking except on certain of its senior teams comprised of

adult women. In the result, MTHL hockey tends to be a somewhat rougher game.

The OWHA is able to provide Ms. Blainey with a meaningful hockey experience. Indeed, after she was denied an opportunity to play for the Etobicoke Canucks during the 1986-87 season, Ms. Blainey played on the OWHA's Scarborough Bantam team. Although an above-average player, Ms. Blainey acknowledges that there were other players on the team more skilled than herself. Certain other OWHA teams probably could have provided her with an even more competitive hockey situation. It was, and still remains, however, Ms. Blainey's preference to play on an MTHL team. Based on her personal experiences she believes MTHL hockey to be more competitive than that played in the OWHA and that the coaches of male teams drive their players harder to reach their full potential. While Ms. Blainey's views in this regard are open to challenge, they are views that are honestly held. It is also Ms. Blainey's evidence that she prefers to play hockey in which body checking is allowed. She testified that she feels body checking adds "a lot more fun" to the game. The evidence indicates that Ms. Blainey is quite adept at body checking. As noted above, while body checking is permitted in the MTHL for individuals her age, it is not permitted in the OWHL. At least with respect to this point, the hockey

experience available in the MTHL is clearly different from that available in the OWHA.

A number of medical experts were called by both sides. Although they differed on certain details, the general thrust of their evidence was the same. They indicated that prior to reaching puberty the average female can successfully compete in contact sports, including hockey, with prepubescent males of the same age. Indeed, because females generally begin puberty before males, it is not uncommon for girls between the ages of 11 and 14 to be bigger and stronger than boys of the same age. By about age 14 or 15, however, the situation dramatically changes. On average, males become taller and heavier. They are also stronger by reason of having greater muscle mass. In the result, males on average enjoy a competitive advantage over females in sports such as hockey. The medical experts agree that these generalizations will not hold true in every case, and that there is a considerable area of overlap between males and females, including among male and female athletes. It follows that some post-pubescent female athletes are able to compete against male athletes in hockey, although probably with less success than if they were competing only against other females.

The medical evidence suggesting that most females cannot compete in serious competitive hockey against post-pubescent males is supported by the evidence of female hockey players. Dr. Lucie Valois, who has played integrated recreational hockey, testified that when males and females play together "for fun", female players do well, but when the play turns competitive, the females are "in trouble". Ms. Lois Cole, a 34 year old member of the Hamilton Golden Hawks, the Canadian entry at, and winner of, the first Women's World Hockey Tournament, testified that notwithstanding her skill as a player, when playing in friendly games with males she had difficulty in strength situations. In this regard, Ms. Cole testified as follows:

I consciously go into the corner thinking, you know, keep your stick down; I've got it down. I'm thinking about it and they (males) just come in, lift my stick, take the puck and they go, and I don't get the puck.

As noted above, the OWHHA and its senior officials strongly oppose Ms. Blainey's efforts to play hockey on a MTHL team. They are joined by a number of other individuals, both male and female, who have been active in promoting opportunities for women in sport. Their concern is that if Ms. Blainey is successful in these proceedings, the structure of the OWHHA will be threatened. One concern expressed at the hearing is that if females are allowed to play on male teams, it would logically follow that males would be entitled to

play on female teams. It is quite possible that some males would want to do so. Indeed, it is even possible that some female teams, desirous of winning at any cost, would actively recruit male players. Concern was also expressed that if permitted to do so, a sizable number of females might decide to play on male hockey teams. The OWHHA points to the possibility that boys' teams might actively recruit females, particularly girls that have reached puberty early. It is also concerned that some females and their parents would see it as an honour for them to move "up" to male hockey, and further, that some females might play on male teams simply because it is more convenient to do so. It is postulated that a movement of females to male hockey would force a number of OWHHA teams to fold. In this regard, Ms. Rider commented that if younger girls were to leave the OWHHA in any numbers to play on boys teams, the "feeder system" for the teams comprised of older players would be destroyed. If this should occur, then when the girls in question reached the age when they were no longer competitive with males, on their return to the OWHHA they might find that the system of female hockey had become a second rate program.

Due to the physiological differences between the sexes, it is unlikely that many females fifteen and over will be able to successfully compete for positions on male teams. Accordingly, the concerns expressed by the OWHHA relate

primarily to prepubescent females who can generally compete on an equal basis with males. The OWHA acknowledges that most girls prefer to play on all-female teams, and that most will not forsake the OWHA for male teams. It is concerned, however, that if enough females leave, particularly the better ones, the OWHA system and its credibility will be undermined. While the concerns expressed by the OWHA are real concerns, the weight of the evidence suggests that the number of females who would play male hockey if permitted to do so is quite limited. No female witness other than Ms. Blainey expressed a desire to play on a male hockey team. No witness referred to any other female on an OWHA team who had indicated a desire to play on a male team. Ms. Rider and Ms. Adams were among the witnesses who were asked if they could name any female other than Ms. Blainey and those without a nearby OWHA team to play on, who had expressed a desire to play on a male team. They could not do so. A number of the country's top female hockey players were called as witnesses. They indicated that they had never been interested in playing on a boys' hockey team. One of them, however, namely Ms. Vicky Sunohara, age 17, reputed to be as the best female hockey player in Canada, did testify that had she been asked to play on a boys' team when she was 10, 11 or 12, she likely would have done so.

The respondents led evidence with respect to the situation in Quebec, presumably on the basis that it illustrates what might happen in this province should hockey become integrated. In 1978 the Quebec Superior Court released its judgment in La Commission des Droits de la Personne c. La Federation Quebecoise de Hockey Sur Glace, Inc. [1978] C.S. 1076, commonly referred to as the "Turbide decision". Quebec does not have, and at the time of the Turbide decision did not have, a well developed girls' hockey program. Ms. Francoise Turbide commenced playing on a boys team in 1974 when she was nine or ten years of age. She also played on a boys team the following year. In 1976 she started playing on a boys team of 13 and 14 year olds. She was removed from the team, however, pursuant to a rule of the Canadian Amateur Hockey Association, to which the Quebec Federation was affiliated, restricting teams to male players. The Court held that the removal of Ms. Turbide from the team constituted a violation of that province's Charter of Human Rights and Freedoms. The Court further went on to issue a permanent injunction enjoining the Quebec Federation of Ice Hockey Inc. from prohibiting females from participating on its affiliated hockey teams. Subsequent to the Turbide decision, females have been allowed to participate in male hockey without interference. Relatively few have taken advantage of this opportunity. In 1978, there were 292 girls playing on boys teams in Quebec. Almost all of these girls

were below the age of 14, which is the age where body checking is permitted. There were, in addition, two registered all-girl teams, as well as 35 senior all-female teams, for ages 20 and over, with about 500 players.

The respondents point to the fact that in Quebec there is almost no all-female hockey for young girls and only a small number of girls playing integrated hockey. As noted above, however, the opportunities for young females in Quebec to play on all-female teams are virtually non-existent. If girls want to play hockey, they must play on predominantly male teams. The fact that only 292 have chosen to do so, suggests that integrated hockey has a limited attraction for girls, even when no other alternative is available. This conclusion is supported by the evidence of Dr. Lucie Valois, the Co-ordinator of the Female Hockey Committee of the Quebec Ice Hockey Federation. She testified that she has received phone calls from girls currently playing on boys' teams asking if there are any female teams in their age bracket. She has also seen newspaper ads such as "Ten-year old girl looking for a female hockey team". Given the differences between the situation in Quebec and Ontario, which does provide opportunities for girls to play on all-female teams, I do not believe the situation in Quebec is likely to be repeated in Ontario should females be permitted to play on male teams.

The respondents also led evidence with respect to the situation in the United States. In the U.S. females are permitted to play on male teams, but males cannot play on all-female teams. In the 1986-87 season there were 131 female teams registered with the Amateur Hockey Association of the United States, a relatively small number considering the population of the Northern States. The evidence does not, however, suggest that the low numbers are due primarily to the fact that females can play on integrated teams. Indeed, the limited evidence on point indicates that relatively few females play on integrated teams. In Massachusetts, which has perhaps the most successful all-female hockey program, with 27 teams, only 40 to 50 females play on male teams. In recent years there has been a decrease in the number of all-female teams playing in Massachusetts. During the same period, however, there has been an even more dramatic decline in the number of male hockey teams. Part of the reason why some girls in Massachusetts prefer to play on predominantly male teams appears to be that they must travel long distances to play on female hockey teams. Mr. Carlton Grey, who was largely responsible for organizing a successful all-female program in Concord, Massachusetts, testified that when female hockey teams were established in the area there was a "massive influx" of girls into the program. The American experience tends to suggest that integrated hockey has only a limited

appeal to females, especially when they have the opportunity to play all-female hockey.

This conclusion is borne out by Ms. Adams' evidence relating to the formation of OWHA teams in Bowmanville, London and Etobicoke. Prior to the formation of these teams, a small number of females in each of the areas played on male teams. Once OWHA teams were formed, however, the numbers of females playing hockey immediately increased. Whereas three or four girls had played on boys' teams in both Bowmanville and Etobicoke, in their first year of operation 29 girls played on all-female teams in Bowmanville, while after two seasons 40 were playing on teams in Etobicoke. In London the numbers went from about 10 girls on boys' teams to 100 females on all-female teams. In addition, each of the municipal arenas in Hamilton currently operates a recreational hockey program in which girls are allowed to participate on male teams. According to Ms. Beverley Mallory, a witness called by the respondents, only two or three girls play in each arena, all age levels included. It is noteworthy that Hamilton is also the home of the Golden Hawks, the OWHA team that represented Canada at, and placed first in, the April 1987 Women's World Hockey Tournament.

Another concern expressed by the respondents is that if females are allowed to play on male teams, municipal

authorities will use this fact as an excuse to deny ice time to OWHA teams. The evidence establishes that municipal authorities have been slow to recognize the existence of female hockey and to provide it with the required ice time. I do not, however, believe that this leads to the conclusion that as a result of a decision in favour of Ms. Blainey municipal officials would be so unreasonable as to attempt to turn back the clock and take ice time away from the organization that is, and will remain, the most important provider of organized hockey for females in Ontario, namely the OWHA.

The respondents and the OWHA contend that the restrictive integration policy of the Ontario Hockey Association, and its application to Ms. Blainey, do not violate section 1 of the Human Rights Code in that the policy is a reasonable one having regard to its purpose and effect. They contend that Ms. Blainey was not adversely affected by the policy in that she had the opportunity to obtain a hockey experience equal to that denied her on the Etobicoke Canucks by playing on an OWHA team. There can be no doubt that the OWHA does offer females a meaningful hockey experience. The fact remains, however, that Ms. Blainey did not desire to play on an OWHL team. She wanted to play hockey where body checking is allowed. In particular, she wanted to play on the Etobicoke Canucks. She had the strength and skill to be

selected to play on the team. Had Ms. Blainey been a boy of the same age, she would have played hockey for the Etobicoke Canucks. She was refused permission to do so only because of her sex. I am satisfied that this amounted to unequal treatment and discrimination on the basis of her sex.

As indicated above, the respondents contend that the Ontario Hockey Association's restrictive integration policy and its application to Ms. Blainey were "reasonable", in consequence of which they were not in breach of section 1 of the Code. Section 1 does not, however, contain the word "reasonable" or address only "unreasonable discrimination". It may be that the reasonableness of a policy not directly related to sex, but which nevertheless has a disproportionate impact on one of the sexes, may be a relevant consideration in assessing whether it results in discrimination based on sex. That, however, is not the instant case. Ms. Blainey was stopped from playing on the Etobicoke Canucks exclusively because of her sex. It was a form of direct discrimination contrary to section 1 of the Code. If the action of the respondents in refusing to allow Ms. Blainey to play on the Canucks was lawful, it can only be because it fell within one of the "exceptions" to section 1 provided for in the Code itself. Before leaving this point, I note that if I am in error in this regard, and section 1 of the Code does, in fact, only prohibit "unreasonable" distinctions based on sex,

I am of the view that the refusal to allow Ms. Blainey to play on the Etobicoke Canucks was unreasonable. My reasons for this conclusion are the same as why I believe the "special program" argument advanced in favour of the OWHHA program for females, which argument I accept, does not logically require that all females must play hockey only on OWHHA teams.

The respondents and the OWHHA contend that the hockey program offered by the OWHHA is a "special program" within the meaning of section 13(1) of the Code. It will be recalled that section 13(1) provides that a right, including the right to equal treatment without discrimination because of sex, is not infringed by the implementation of a special program designed to assist disadvantaged persons or groups to achieve equal opportunity. The OWHHA contends that because it is offering a special program, it can exclude males from playing on OWHHA teams, and further that females can be prohibited from playing on male teams unless there is no comparable female team available to them. In short, it is seeking the continuation of the existing restricted integration policy of the Ontario Hockey Association.

I am satisfied that the hockey program offered by the OWHHA does, in fact, qualify as a special program under section 13(1) of the Code. The evidence clearly establishes

that as a group females in this province do not have the same opportunity as males to play organized competitive hockey. Female hockey must continually struggle against the view that hockey is a male only sport. It must also struggle for access to ice time. Because of these handicaps, the program offered by the OWHHA does not have the same level of participation as does male hockey. Further, while post-puberty females can compete against similar age males in terms of skill and intelligence, the majority cannot compete in terms of size and strength. Although prepubescent girls can compete equally with prepubescent males, to allow young boys to play on girls' teams would lead to serious difficulties for female hockey. Many parents are opposed to their daughters playing hockey, even on all-female teams. This opposition would likely intensify if males were permitted to play on female teams. Most females desire to play on all-female teams. To allow males to play female hockey would likely result in a large number of female players deciding to leave the sport. It follows that if males were permitted to play OWHHA hockey, even a small number of them would likely have a major adverse effect on the already limited opportunities for females to play competitive hockey. My finding that the OWHHA's program of female hockey meets the requirements for a special program under section 13(1) of the Code means that OWHHA teams can continue to

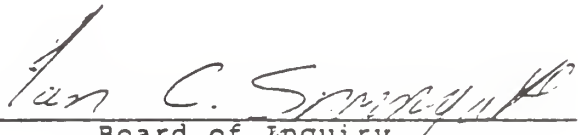
refuse to admit males without infringing section 1 of the Code.

The fact that the program offered by the OWHA qualifies as a special program under the Code does not, however, reasonably lead to the conclusion contended for by the respondents and the OWHA that all females must play on OWHA teams. It was not argued, nor does the evidence indicate, that male hockey needs to be protected from females. Further, the evidence does not support the contention that if females are allowed to play on male teams, female hockey in this province will be at risk. The weight of the evidence establishes that females prefer to play on all-female teams, a preference presumably reinforced by parental and cultural pressures against girls playing hockey with boys. As already noted, during the hearing the only female identified as desiring to play on a male team, notwithstanding the availability of a comparable OWHA team, was Ms. Blainey herself. From ages 15 and up, most females are simply unable to successfully compete against males because of differences in height, weight and strength. Given these considerations, I am satisfied that while there may be some adverse impact on the OWHA if females are allowed to play on male teams, the impact will prove to be relatively modest. Such an impact is not a sufficient basis to deny to Ms. Blainey, an individual who desires to play on a male team

and has the ability to do so, her right under section 1 of the Code to equal treatment without discrimination because of her sex.

Having regard to the foregoing, I am satisfied that the action of the respondents in denying Ms. Blainey a position on the Canadian Canucks hockey team because of her sex was unlawful and in violation of her rights under section 1 of the Human Rights Code. At the hearing the parties agreed that should I uphold the complaint, I should remain seized of this matter in connection with the fashioning of an appropriate remedial order. I will remain seized of these proceedings for that purpose.

DATED at Mississauga, this 3rd day of December,
1987.


Board of Inquiry

